93-315

Supreme Court, U.S.
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NO. _____

IN THE

SUPREME COURT

OF THE UNITED STATES

EDWARD A. CHMIEL - PETITIONER

vs.

COMMONWEALTH OF PENNSYLVANIA - RESPONDENT

# PETITION FOR WRIT OF CERTIORARI

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Supreme Court I.D. No. 20682

## QUESTIONS PRESENTED FOR REVIEW

1. Whether Pennsylvania Crimes Code Section 9718, being a mandatory sentence against a seventy-two-year-old man with no previous criminal record, a World War II combat veteran, and a solid citizen in his community prior to the commission of these crimes, violates his rights and is therefore unconstitutional given the unique facts and circumstances of this case.

2. Whether the lower court abused its jurisdiction by disregarding the plea bargain arranged and submitted to it, given the facts and circumstances of the crimes committed.

3. Whether the sentence is in violation of the Eighth Amendment and of the Fourteenth Amendment of the Constitution of the United States.

## LIST OF PARTIES TO THE PROCEEDING IN THE COURT BELOW

The Appellant is Edward Anthony Chmiel, and the Appellee is the Commonwealth of Pennsylvania by the District Attorney of York County, Pennsylvania. The Office of the Attorney General, Criminal Law Division, Commonwealth of Pennsylvania, was also a party to the appeal below.

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Cases

1. Commonwealth v. Cooke, 342 Pa. Super. 58, 69, 492 A2d. 63, 69 (1988).

2. Commonwealth v. Leonhart, 358 Pa. Super. 494, 517 A2d. 1342 (1986).

3. Commonwealth v. Mikulan, 504 Pa. 244, 470 A2d. 1339 (1983).

4. Commonwealth v. Parker White Metal Company, 512 Pa. 74, 84, 515 A2d. 1358, 1363 (1986).

5. Commonwealth v. Wildermuth, 347 Pa. Super. 640, 501 A2d. 258 (1985).

6. Commonwealth v. Wright, 508 Pa. 25, 40, 494 A2d. 354, 361 (1985).

7. Flemming v. Nestor, (1960) 363 U.S. 603, 611, 80 S.Ct. 1367, 1372 4 L.Ed.2d. 1435, 1445.

8. Moyer v. Phillips, 462 Pa. 395, 341 A2d. 441 (1975).

9. Robinson v. California, 370 U.S. 660, 675, 82 S.Ct. 1417, 1424, 8 L.Ed.2d. 758 (1962).

10. Snider v. Thornburgh, 496 Pa. 159, 166, 436 A2d. 593, 596 (1981).

11. Solem v. Helm, 463 U.S. 277, 77 L.Ed.2d.637, 649, 103 S. Ct. 3001 (1983).

## OPINIONS BELOW

The Order of the Supreme Court of Pennsylvania, which herein is sought to be reviewed, is Case No. 0338 M.D. Allocatur 1992, and is reprinted in the separate Appendix to this Petition, Page C-1. The prior Opinions of the superior Court of Pennsylvania, also reprinted in the Appendix, Page B-1, is Case NO. 00522 HBG 1991, and of the Court of Common Pleas of York County, Pennsylvania, also reprinted in the Appendix, Page A-1, is Case Nos. 1340 C.A. 1990 and 3315 C.A. 1990.

## STATEMENT OF JURISDICTION

The Order of the Supreme Court of Pennsylvania was entered on July 16, 1993. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Constitutional provisions involved are the Eighth and Fourteenth Amendments to the United States Constitution.

## STATEMENT OF THE CASE

This criminal appeal is from guilty pleas and concurrent mandatory 42 Pa. C.S.A. Section 9718 minimum sentences of five years on separate informations.

The first action - No. 1340 CA 1990 - charged the Defendant with Involuntary Deviate Sexual Intercourse and Corruption of Minors against a minor, Andrew M. Janeczko, and the offense of Obscene or Other Sexual Material against Andrew and two other minors.

The second action - No. 3315 CA 1990 - charged the Defendant with earlier Involuntarily Deviate Sexual Intercourse and Indecent Assault against Andrew's older brother, Brad Janeczko.

On May 9, 1991, the 71 year old Defendant pleaded guilty in the York County Court of Common Pleas on consolidated cases to the two Involuntary Deviate Sexual Intercourse Counts, the Corruption of Minors Count and the Obscene or Other Sexual Materials Count. On July 22,

1991, Defendant was sentenced to a concurrent sentence of five-to-ten years, the minimum period composing the mandatory five-year term created under Section 9718.

After Motions to Withdraw Guilty Plea and to Modify Sentence were filed timely and denied, his Motions for Bail included therein were granted on September 30, 1991. Notice of Appeal to the Superior Court were filed on August 20, 1991, the Docketing Statement was filed timely shortly thereafter as well as the requisite Notices of Intent to Challenge the Constitutionality of Section 9718.

Following Argument before the Superior Court on April 8, 1992, the Appellate Panel upheld the Lower Court on July 22, 1992, and this Petition followed.

Mr. Chmiel's conduct began in 1986, when he became mutually involved with Brad Janeczko in oral sex. During the following years, he became mutually involved with Brad Janeczko's younger

brother, Andrew, for a period of several months. Both of the victims were under the age of sixteen when the incidents occurred, and all of the activities were consensual. A remaining count involved showing pornographic movies on one occasion to Andrew and to the other minors on the day Andrew reported the incidents.

There are three aspects which make this case unique. The first is the Defendant's age. When he committed the initial incident with Brad Janeczko, he was 67 years old. By the time he became involved with Andrew, he was almost 70 years old. The second aspect was Defendant's state of mental health at that time, which was one of medically certified mental illness. After he was charged, Defendant was examined thoroughly by the renown Sexual Disorders Clinic in the Johns Hopkins Hospital in Baltimore, Maryland. The referring physician was Dr. Fred Berlin, Clinic Director, whose reputation in the field is first-rate, and whose initial diagnoses

concluded four major area of concern, the two primary ones being major depression and homosexual pedophilia of none exclusive type.

The third aspect was his history, which not only involved no crime, but was exemplary. Mr. Chmiel helped raise his brothers and sisters as a youngster in his strongly Catholic family in Baltimore. He served in the Marines in World War II and was engaged in heavy combat throughout the South Pacific. He returned home, married, fathered two children, worked, became a contractor, and remained a hard worker and strong family man. About twenty years ago, he and his wife bought a farm in the Spring Grove area of York County, which he tended.

He became active in the Lions Club, and especially in the Catholic Church. He contributed time and effort to maintenance and remodeling of his church parish. He made friends easily because his demeanor is outgoing and friendly. He was the model of

respectability as advanced age approached. Then something went wrong, and he started committing acts that were inexplicably out of character.

The tragedy of this case is a persistent refusal by the Courts because of a mandatory act to deal with this case in terms of its real genesis; mental illness. Defendant does not appeal just because he is old, or just because he is a good man who went wrong and begs a break. He appeals because modern medical science has concluded he could not control himself due to certified mental illness, yet faces a mandatory act which allows no flexibility in his punishment.

For many months, Defendant has been involved in therapy in the Johns Hopkins program. Dr. Berlin has concluded that he is not a danger to the community, and that imprisonment would not be necessary. The clinical director concludes that his program success rate is over ninety-seven percent, with

no evidence of criminal recidivism.

Yet in the face of the Defendant's illness, the strong mitigating factors to which he would normally be entitled, and Dr. Berlin's recommendations, he was sentenced under 42 Pa.C.S.A. Section 9718, and its mandatory five-year sentence for the Involuntary Deviate Sexual Intercourse violations under 18 Pa. C.S.A. Section 3123.

## REASONS FOR GRANTING WRIT

The Order of the Supreme Court of Pennsylvania should be reviewed by this Court because the Pennsylvania mandatory act binding this Appellant violates every tenet of decency and fairness which modern medicine and law have evolved.

It violates the Eighth Amendment to the United States Constitution because it mandates what clearly amounts to cruel and unusual punishment.

It violates the Fourteenth Amendment to the

United States Constitution because it denies Appellant due process of law and equal protection of the law.

Despite the unique facts of this case, the act mandates inflexibly a five-year sentence for a seventy-two-year-old man who suffered from a medically certified mental illness at the time the criminal acts were committed. The Court should also review whether failure to provide proper notice under that section by the District Attorney of York County violated due process.

In upholding the trial court, the Superior Court began its analysis of the constitutionality of Section 9718 by citing Mikulan and Cooke (Appendix B-3), as authority that there is a strong presumption that any statute is constitutional. The United States Supreme Court has held, however, that no penalty is per se constitutional, Solem v. Helm, 463 U.S. 277, 77 L.Ed. 637, 649, 103 S. Ct. 3001 (1983).

The Superior Court cited Snider v. Thornburgh (Appendix B-3), which held that a statute will not be declared unconstitutional unless it clearly, palpably and plainly violates the Constitution. Appellant believes that by contrasting Section 9718 with 18 Pa.C.S.A. Section 104 of the Pennsylvania Crime Code and with 42 Pa.C.S.A. Section 2154 of the Pennsylvania Judiciary Code - two uniformly fair and flexible guidepoints that would withstand any challenge under the Fourteenth Amendment and Pennsylvania Declaration of Rights - the legislative intent underlying the mandatory act appears inappropriate and hostile to modern jurisprudence and penology - which have learned to expect better (Appendix D-1).

The Appellate Court's reliance on Commonwealth v. Wildermuth (Appendix B-3), to justify the five-year minimum sentence is not persuasive because the circumstances of the 80 -

81 year old defendant in that case were different than those of this case. Whatever his age, there is no evidence that Wildermuth was suffering from a medically certified mental illness at the time his crimes were committed. In fact, Section 9718 violates the Eighth Amendment mandate against Cruel and Unusual Punishment because it arbitrarily punishes Appellant for being sick. Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417. 8L.Ed. 758 (1962), and violates due process as well, under the standard of Flemming v. Nestor, 363 U.S. 603, 611, 80 S.Ct. 1367, 1372, 4L.Ed. 2d. 1435, 1445 (1960).

The Court's application of Moyer v. Phillips (Appendix B-7,8), recites generally and reasonably the Equal Protection standard, but otherwise falls short because it overlooked Appellant's circumstances. Moyer holds that:

> "(any) classification must be reasonable, not arbitrary, and must rest upon some

ground of difference having a fair and substantial relation to the object of legislative so that all persons similarly circumstanced will be treated alike" (emphasis added).

Assuming that those classified under Section 9718 must force a mandatory sentence out of an objective legislative purpose - a laudable aim! - we cannot say that Appellant was similarly circumstanced with other Section 9718 offenders because he was uniquely and medically certified, or mentally ill at the time the acts were committed. Given the fundamental rights affected here, Appellant argues that "strict scrutiny" of the statute should be applied. Commonwealth v. Parker White Metal Co. (Appendix B-7).

Appellant concludes there are two major classification problems arising from the equal protection requirement. First, he is classified by Section 9718 separately from those tried and

sentenced within the general purposes of the Crimes Code and the sentencing guidelines. The offending statute does manifest a "patently arbitrary classification, utterly locking in rational justification" under the Flemming test alluded to above, especially by ignoring the availability of the mitigating or aggravating circumstances by deviation under the Pennsylvania Sentencing guidelines.

Secondly, he is arbitrarily forced within a class even though he is not "similarly circumstanced" under the Moyer test due to his medically certified mental illness.

Appellant most respectfully concludes that for the above reasons and others argued in his Brief before the Pennsylvania Superior Court, he has been denied due process and equal protection of the laws and, therefore, faces cruel and unusual punishment unless Section 9718 is laid to rest by the Honorable Court because it is in every way unconstitutional, is unnecessary due

to the strong expert assistance available to the modern sentencing court, and is tantamount in this case to a death sentence for a non-capital crime.

## CONCLUSION

For all the foregoing reasons, Appellant respectfully requests that the Honorable Court grant Certiorari from the Supreme Court's Order dated July 16, 1993.

Dated November 17, 1993

Respectfully submitted,

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Appendix A-14

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

| | | |
|---|---|---|
| COMMONWEALTH | : | No. 3315 C.A. 1990 |
| | : | |
| vs. | : | 1) Involuntary Deviate Sexual Intercourse |
| | : | |
| EDWARD CHMIEL | : | 2) Indecent Assault |
| COMMONWEALTH | : | No. 1340 C.A. 1990 |
| | : | |
| | : | 1) Involuntary Deviate Sexual Intercourse |
| vs. | : | |
| | : | 2) Corruption of Minors |
| | : | 3) Obscene and Other Materials |
| EDWARD CHMIEL | : | |

(Sentence)

York, Pa., Monday, July 22, 1991

Before Honorable Emanuel A. Cassimatis, Judge

APPEARANCES:

C.N. Patterson, Esquire
Assistant District Attorney
For the Commonwealth

Dennis A. Alessi, Esquire
For the Defendant

* * *

MR. PATTERSON: Commonwealth versus Edward Anthony Chmiel, 1340 of 1990, the charges being involuntary deviate sexual intercourse, corruption of minors and obscene and other sexual materials.

Number 3315 of '90, Commonwealth versus Edward A. Chmiel, the charges are involuntary deviate sexual intercourse and indecent assault.

Your Honor, the Defendant stands before the Court represented by his counsel, Mr. Dennis Alessi. This is the time set aside for sentencing in this particular case, pursuant to a presentence investigation report and such additional medical and related reports as may appear, and would, I think, then be incorporated by reference into the record in this case.

THE COURT: Mr. Alessi, anything you would like to say or your client would like to say before we proceed with sentencing?

MR. ALESSI: Your Honor, Dr. Fred Berlin is available by speakerphone, if the Court wishes

to speak with him in Chambers, hopefully. He was supposed to be there at 9:30.

THE COURT: No, we have reviewed the reports from John Hopkins. They are very thorough, and we feel no need to speak to Dr. Berlin or to the counselor, Randy Miller, who also I understand would be available, too. We see no reason to do it. We accept what is in the reports, and as you will see in our discussion, and they have expressed themselves very clearly and very articulately.

MR. ALESSI: I will make some comments, if the Court please.

THE COURT: All right.

MR. ALESSI: They will be brief and nopefully to the point. The record shows that for the first 65 years of his life, Edward Anthony Chmiel was a model citizen. He was born into a Polish Catholic family. He learned its strong and positive values early, as well as the tenets of his faith.

As he grew, he eventually learned the trade of a carpenter, and I believe he has also indicated he worked in a steel mill, and with the onset of World War II, I believe in 1942. If I am not mistaken, he joined the Marines and experienced combat in the South Pacific, and he went in on the third wave in Okinawa and took a Purple Heart with shrapnel throughout his body. He was discharged from the Marines.

He then actively became a contractor. He was married, and I believe he had two children who are now both grown. Even beyond that he became very active in the Catholic church and in the Lions Club, and when he retired his hours of service in the community increased.

There was never any crime in his character on his record until 1985 when he became involved in the clear legal and moral wrongs he pled guilty to last May the 9th. It's within his character that he knew he had done wrong and was extremely remorseful for what he had done.

He has over the past one-and-one-half years, and I have seen this in my own personal experience with him, figuratively been through hell. This, in turn, shows that the wrongs that he committed were severe deviations from the man that Ed Chmiel was, and is on the road to becoming again.

The question of what to do with Ed Chmiel is a tough one for anyone. In terms of classic reasons for punishments the answer becomes perhaps clearer. It is respectfully submitted that not all of them shall apply here.

The first one, retribution or vengeance, that old remedy is from such Codes as the Mosaic or Roman, which really has no standing in civilized courts for obvious reasons.

The second is incapacitation, the idea would be to lock Mr. Chmiel away from society's protection, but we have Dr. Berlin's recommendation that he is no longer at risk, and we are, therefore, probably not protecting

society at all.

The third classic reason would be deterrence, and to lock him up for this reason, do we do so to deter other elderly people from committing crimes should they become mentally ill? Certainly we have incarcerated many other men and women who have not been diagnosed as homosexual pedophilia, erectile dysfunction, based on depression and age. Ed Chmiel knew that when he committed the wrongs he did.

The fourth is rehabilitation, and we submit, most respectfully, that this reason should apply here. Dr. Fred Berlin at Johns Hopkins Hospital Sexual Dysfunctional Unit has examined Ed Chmiel thoroughly on an inpatient basis, and found he was mentally ill and needed treatment. He believes with much therapy and community service he will recover. He does not believe that incarceration would benefit either society or Mr. Chmiel, given all the facts and circumstances we have here.

We refer the Court to a letter from Mr. Ronald E. Lease, which I believe is in the file. I have a copy of it, if it isn't.

THE COURT: Yes.

MR. ALESSI: The letter was written on December the 24th, and I think his conclusion probably speaks pretty well for the community in which Mr. chmiel has been involved so positively for so many years.

The statement is, "By law I'm not sure what punishment is called for. I would suggest that controlled public service is what snould be required for Edward Chmiel. Other punishments would no be a worse punishment than what he had has already put himself through and by "putting him away, " will, in fact, decrease the service that this man can give to the public and the community. We respectfully submit that Mr. Lease intended to speak for a significant segment of the community that knows Mr. Chmiel best, and the Dr. Berlin's concurring finding

should be given all the more weight."

THE COURT: All right. Mr. Chmiel, anything you would like to say?

THE DEFENDANT: Never in my life did I think I would be standing here for such an awful thing, the way I was brought up and the way I lived. I did what I did, and I can't deny that.

It took me two weeks in the hospital to realize maybe what could have happened, but for what happened I can't do nothing about it, to make sure that nothing like that ever happens again, and it just wasn't me that did those things. I still can't believe it.

* * *

S E N T E N C E

The Defendant is before us for sentencing on his pleas of guilty in 1340 Criminal Action 1990 to involuntary deviate sexual intercourse, corruption of minors, obscene and other sexual materials; and in 1313 Criminal Action 1990, involuntary deviate sexual intercourse.

It's very important that everyone present understands the role of the judge in imposing sentence. As we live under the rule of law and not the rule of man in our country and state, the judge is obliged morally, as well as legally, to uphold the law. His oath of office requires no less.

We begin this understanding by considering the Sentencing Code. The law related to sentencing is passed in the statutes by the legislature and signed into law by the governor. It provides that, "In determining sentence to be imposed, a Court shall accept where a mandatory minimum sentence is otherwise provided by law, consider and select one or more of the following alternatives, and may impose them consecutively or concurrently."

Since a mandatory minimum sentence in here involved, we pass over those. We will allude to some of them in a moment. The following section of the Sentencing Code then sets forth the

general standards.

"In selecting from the alternatives, the Court shall follow the general principle that the sentence imposed shall call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim, and on the community and the rehabilitative needs of the Defendant. The Court shall also consider any Guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing."

With respect to probation, the Court takes into consideration a number of things, including whether the criminal conduct of the Defendant either caused nor threatened serious harm, or the Defendant did not contemplate that his conduct would do that where the Defendant acted under strong provocation, or that there were substantial grounds tending to excuse or justify the criminal conduct of the Defendant, though failing to establish a defense; that the victim

of the criminal conduct of the Defendant induced or facilitated its commission; that the Defendant has compensated or will compensate the victim or his criminal conduct for damage or injury he sustained; the Defendant had no history of prior delinquency or criminal activity, or has led a law-abiding life for a substantial period of time before the commission of the present crime; that the criminal conduct of the Defendant was the result of circumstances unlikely to recur; that the character and attitude of the Defendant indicate that he is unlikely to commit another crime; that the Defendant is particularly likely to respond affirmatively to the probationary treatment; that confinement of the Defendant would entail excessive hardship to him or his dependents, and in a catchall, such other grounds which indicate the desirability of probation.

It is self-evident, as I will go through my sentencing colloquy, that a significant number

of these grounds are present, and would indicate that probation would be a favored disposition.

With respect to partial confinement, the Sentencing Code say that, "If in the light of all the circumstances, and when facilities are available, and probation would be inappropriate, but it further appears that a sentence of total confinement would not be required, then the Court may impose a sentence of partial confinement."

We should note that with respect to partial confinement, that that, too, might appear to be very appropriate in this case, given the rehabilitative needs of the Defendant as set forth in the report from Johns Hopkins.

With respect to total confinement, the Sentencing Code says that, "The Court shall impose a sentence of total confinement, of having regard to the nature and circumstances of the crime, and the history, character and condition of the Defendant. It is the opinion

that the total confinement of the Defendant is necessary, because one, there is undue risk that during a period of probation or partial confinement the Defendant will commit another crime. Second, that the Defendant is in need of corrective treatment that can be provided most effectively by his commitment to an institution; or, third, a lesser sentence will depreciate the seriousness of the crime of the Defendant."

We would suggest that it is self-evident that the first two of these criteria do no apply in this case, and the only one that would apply would be the third one, that a lesser sentence, that is lesser than total confinement, would depreciate the seriousness of the crime of the Defendant.

Finally, we look at the Sentencing Code, Section 9718, which provides -- this is one of the mandatory sentence provisions -- and it says, "A person convicted of the following offenses when the victim is under 16 years of

age shall be sentenced to a mandatory term of imprisonment as follows:" And with respect to involuntary deviate sexual intercourse, it is not less than five years.

Now, we note that this section is unlike a number of other sections which impose a mandatory minimum sentence, but the imposition of the mandatory minimum sentence in those other cases is only triggered if the District Attorney's Office gives notice that the mandatory sentence is to be applied.

And those other provisions are the mandatory sentence for offenses committed with firearms, for sentences for offenses committed on public transportation, mandatory sentence for second or subsequent offenses, for drug offenses, and even for trafficking drugs to minors. All of those are charges whose mandatory provisions are triggered only if the Commonwealth gives notice. That is not the case with the mandatory sentence classification that

we are now faced with. The mandatory sentence in this case applies whether or not the Commonwealth gives notice.

We must comment also on the Sentencing Guidelines, because the law says they must be considered, and the Sentencing Guidelines provide for the following mitigated standard and aggravated minimum sentences for involuntary deviate sexual intercourse: 27 to 36 months for in the mitigated range; standard range, 36 to 60 months; the aggravated range of 60 to 75 months.

It is self-evident that the mandatory sentence of five years is in the aggravated range of this mandatory sentence, so the Court has no discretion to apply the mitigated or standard range, only something in the aggravated range.

In the corruption of minors and the obscene and other sexual material, the mitigated ranges are non-confinement; the standard range is zero

to 12 months, and the aggravated range, 12 to 13 months.

A factor which the Court must consider is the impact on the victims, and this is what triggered the mandatory sentence in this case, because both the victims of the involuntary deviate sexual intercourse offenses are under 16 years of age, and in the 1340 action the victim was -- it varies. The Defendant in his narrative says he was 11 to 12 when this started. Other reports say he was 14.

In any event, this particular victim is now in a drug and alcohol and psychiatric facility. He had an diminished I.Q., and his mother is of the view that the Defendant preyed on him, as he was an easy victim. Whether he was an easy victim or a willing victim, and there is no evidence of any force, obviously, and I say "obviously", there is no evidence of force in this case, that particular victim has been acting out sexually as well as emotionally, and

has an incredibly severe emotional problem, which is now being dealt with. How successful it will be, we really don't know.

The victim in the other case was a brother of the first victim, and it appears he was 11 to 12 when it started, although this particular victim says he was 13. We will comment more in a moment about the description of the offenses.

We do want to comment for the moment on what we regard as the social history in this case. We note that the Defendant's father was killed in a coal mine accident when the Defendant was four years of age. The Defendant ended up becoming the father in that family, helping his widowed mother raise the four siblings of the Defendant. Harry died when he was 80; his sister, Rose is a nun. He has a sister, Blanche. He has a brother, Joseph, 65, who has been blind since birth.

The Defendant has continued to help and serve as a father, as it were, to the others in

his family. The Defendant has been married for 37 years. He has two children, a 31-year-old son, who is married, and a 21-year-old daughter, who is attending college and lives at home.

The Defendant has been very active in church, his community work, and in numerous civic organizations. He was self-employed as a contractor for 25 years in Spring Grove. He was a Marine in the Pacific in World War II and saw lots of combat in Iwo Jima, Okinawa and Guam. His attorney stated and notes he received the Purple Heart and was in the third wave at Okinawa. The Defendant has no prior criminal record. There is no evidence of any illegal substance abuse.

The Johns Hopkins report, which we will allude to in a moment, indicates that the Defendant's diagnosis of homosexual pedophilia, major erectile dysfunction, and depression and fetish and recommended inpatient treatment.

As we will see, the Defendant did enter

into and complete that inpatient treatment. We should note in this case that the victim in the 3315 Criminal Action 1990 offense came forward and disclosed the sexual contacts with the Defendant had been involved in sexual contacts with his younger brother.

At this point I do want to comment more fully on the report from Johns Hopkins. We have the letter to me from Dr. Berlin also signed by Randy Miller of the group psychotherapists. I have met Dr. Berlin, and there is no one I regard higher in that field than Dr. Berlin, and I can accept everything that he has in this letter.

He notes that the Defendant was treated as an inpatient in Johns Hopkins, and at the time of his discharge he was placed in outpatient psychotherapy in the group of Dr. Miller.

It is noted that Mr. Chmiel continues to make good progress in psychotherapy. He has become increasingly able to recognize the

factors that were correlated to the onset of the sexual disorder, and is working hard to develop relapse prevention strategies. The report also notes that Mr. Chmiel has a deep sense of shame and remorse, which makes a recurrence of this behavior highly unlikely.

I think it is significant that Mr. Chmiel's insight into his psychic condition is noted as making him a valuable member of the psychotherapy group, because as a result of his experience, Mr. Chmiel is able to help other group members recognize their resistance to accepting their diagnosis, and this has been instrumental in helping others understand how their inappropriate sexual behavior impacts on others.

The report says, "with continued treatment it is anticipated that Mr. Chmiel will be able to more completely understand his vulnerabilities so that he might minimize the likelihood of relapse. We do not believe that

Mr. Chmiel presents a danger to the community, and from a rehabilitation standpoint, do not believe that imprisonment would be necessary. We do recommend, however, the Mr. Chmiel remain in weekly psychotherapy and be compelled to engage in community service. In this way he can make restitution in a meaningful way." We can unquestionably accept all of those statements and conclusions in the report.

I want to highlight some of the comments that have been made in letters received in support of Mr. Chmiel concerning his character and the exemplary life he lives.

His counsel has already referred to the letter from Ronald E. Lease. Mr. Lease says that his references to the Defendant relate to prior to March of 1990, simply due to the fact that Mr. Chmiel dropped from the Lions Club at that time, and Mr. Lease's association with Mr. Chmiel has been minimal since then.

Here are some quotes from Mr. Lease's

letter: "He had has always been a go-getter, a leader, and one of the hardest working men I have been associated with. His interest in Lions, his church, the AARP, North Codorus Township Recycling, and many more than I am sure I am not aware of, only begin to show his dedication to the service of others. He was the foundation of our Jefferson Lions Drug Awareness Book Cover Project within the Spring Grove School District. He has worked at many key projects at the Lions Beacon Lodge Camp for the Blind. His contributions can go on and on, if more is needed. Let me sum it up in I would judge Ed Chmiel to be a caring man. Let's be blunt. Ed is messed up. I know it, you know it, and he knows it. The just and right punishment now becomes the question. Some would judge and convict with "let him rot in hell." Well, I suggest that is already being done. Ed has dropped out of almost everything because of his own judgment and shame. He no longer faces

the people he once dealt with, and those to whom he does see, he is in constant guilt. By law, I am not sure what punishment is called for. I would suggest that controlled public service is what should be required for Ed Chmiel. Other punishments will not be a worse punishment than what Ed is already putting himself through, and by putting him away will, in fact, decrease the service that this man can give to the public and the community."

In another letter, Shirley Glass says that she and Ed served on parish council together at the Sacred Heart Catholic Church in Spring Grove in the late 70's. She notes that Ed was very instrumental in the success of many fundraising and social activities during the period of their church's growth from mission church to a parish status in 1976.

She notes that Mr. Chmiel was also an active participant in the planning process for construction of the parish social hall. Mr.

Chmiel and his wife, Jane, acted as chairmen of the parish Lenten Appeal Campaign for the Harrisburg Diocese for several years, with considerable growth in each year's campaign.

Ed has also gained respect and recognition for his participation in helping organize and implement recycling efforts in his community of North Codorus Township. She says she has known Ed to follow through on any project in which he has participated, energetically, conscientiously doing his utmost to reach a successful conclusion. I would not hesitate to support and work with Ed Chmiel on any project of mutual interest. I consider him a friend as well as a fellow parishioner.

Another letter is from Willis Rinehart. That speaks about contacts with the Defendant through the Jefferson AARP. I am not going to read all of these things, because these letters all have the same tone -- that the Defendant was not just a card-carrying member of these

organizations. He played a very active role in furthering the aims and objectives of the organization, in raising community financial and social support for the various programs.

His last paragraph I think bears repeating. "I do no know what got Eddie in trouble and discard rumors, I do know his wife well enough to speak to, but I do not know his personal affairs, but in my opinion, he is one heck of a friend and can still be service to the community."

There is a letter from his pastor, Boden -- I can't read the writing --

THE DEFENDANT: Bodenshatz.

-- Bodenshatz. He begins his letter by saying that he has been asked to make a recommendation on behalf of Mr. Chmiel, a former parishioner, and then he says without any kind of hesitation, "It is my pleasure to state that Mr. Chmiel, in my view, is a fine and honest man interested in his family, as well as in his

community, both religiously and civilly. During my pastoral assignment in Spring Grove, Mr. Chmiel went all the way to renovate, in his leisure time, the rectory of the parish, which was in bad condition. He gave his all, and such was the spirit of dedication to parish activities as well as to other organizations in Codorus. In dealings with people I always find him most congenial, sociable and obliging. Whatever he did constructively had to be done as correctly as possible. To sum it up, Mr. Ed Chmiel is a responsible, reliable person who lives up to his commitments."

The last letter I will refer to is a letter from his blind brother, Joseph Chmiel. He says that, "Please be advised until his present problem, his brother, Ed was an outstanding citizen, brother, and in his teenage and younger years, a stand-in father for my sisters and widowed mother. To help my mother and us to survive he would, while in grade school, do the

man's work and earn what he could to help." He says that, "Ed didn't go to high school. He went to work to contribute to our welfare. He turned over his pay to our mother as some husbands would. He contributed in this manner until he married very late at about age 38. Even after marriage he helped us with repairs, et cetera, and he notes that even when he was in the Marine Corps in World War II he set pins in a bowling alley to send home whatever he could," and he notes, "any time still we or I would need anything, we could turn to Ed, and a problem would be solved. He would help anytime he could. Please, please consider all his good qualities and, indeed, the predicament Ed now finds himself in."

One of the factors which the Court must take into consideration, in addition to the character of the Defendant, is the nature of the offenses, and as we have noted, the offenses involved sexual contacts with youth under the

age of 16.

We note that in 1340 Criminal Action 1990, the investigating police officer states that the Defendant readily admitted to the charges. He would place a bucket between two boards if his wife was away from home, which signaled it was all right for the victim to come over, and they would perform oral and anal sex, and take showers together.

When the victim's parents were divorced, and his mother moved to the Springettsbury area, the Defendant went out to a spot behind the victim's apartment and waited for a signal fromthe victim that he could come up to the apartment when his mother wasn't there.

During one of those incidents the Defendant brought pornographic videotapes to show to Andrew and some of his friends who were there. A caretaker of the victims was home, interrupted the movie, the Defendant hid in the closet, the other youthful persons there went to the

bathroom, but then exited the bathroom and left.

The Defendant remained in the closet until the victim told them it was clear to come out. The victim relates that the Defendant had threatened to hurt or kill him if he told anyone. We are not sure that that is corroborated by any other source.

The investigating police officer recommends the Defendant receive at least one mandatory sentence of incarceration for five years. He feels that since that victim had a reduced mental I.Q. and did not protest the mental capabilities to know or understand what was going on, that the Defendant preyed on him more than he would another boy.

We note that the presentence report in this context says that there are related incidents of sexual touching of children in Spring Grove that the Defendant is believed or rumored to have been involved with. There is no corroboration for these, and we state for the record that we

give no credence to these, and they play no part in our decision.

With respect to the 3315 Criminal Action 1990, this involved oral sex with an older brother of the victim's in the first case, and it was mutual fellatio, some of which took place in the church in Spring Grove, in the rectory, as we recall, and also in the victim's home. The investigating police officer in that case recommends a period of incarceration if, in fact, the Defendant is a pedophile, and a long-term program spanning more than five years.

There are a number of reasons in the Defendant's situation, and in what we are confronted with in fashioning a sentence, first we not that basically people aren't all good or all bad. They do good things and they do bad things. And, except for his sexual conduct with these juveniles, the Defendant has done many many good things.

As we have noted, he became the father to his family to help his widowed mother raise five children. He is a combat veteran or some of the most intensive fighting in World War II. He is an honorable family man, an outstanding church man and citizen active in his church, community and civic activities.

On the other hand, these sexual acts are especially bad. This is due to the youth of the victims, and the Defendant clearly did his share in initiating and continuing these contacts. One of the victims with a lower I.Q. was especially vulnerable, and as we have noted, is now in drug and alcohol and psychiatric inpatient treatment.

Third, we note that the Defendant is remorseful. We find that he is not likely to reoffend if he continues the recommended treatment, the outpatient psychotherapy group where he is not only helping himself, but he is helping others.

The fourth lesson to be learned from this is mandatory sentencing. There is a mood in our country today that we should get tough on criminals, and the judges are soft in their sentences; and, therefore, the Legislature enacts laws which require the judge to impose mandatory minimum sentences. These sentences take away the judge's discretion to impose a sentence below the mandatory sentence -- in this case, five years.

There are good arguments in this case to emphasize if the Court had discretion to impose a sentence of less than five years. The rehabilitative needs of the Defendant to recognize the outstanding character of the Defendant is remorse. The fact that we view protection of society, and that the Defendant is not likely to reoffend with his continued treatment as not presenting an issue where incapacitation or continued imprisonment is necessary.

We note until his mid-60's the Defendant never had any history or any evidence at all of sexually acting out as a pedophile. In fact, the Sentencing Guidelines in this case would impose a sentence in the minimum range of 27 months, which is two-and-a-quarter years up to five years, which is the beginning of the aggravated range; however, we view ourselves as limited by law, in mydiscretion, in that I must impose the minimum sentence of five yers. The fact that the District Attorney has plea bargained not to appeal any sentenceI impose, even if less than the mandatory sentence, is not an opportunity for me to ignore the clear letter and intent of the law, which I took an oath to uphold.

Therefore, I will apply my discretion above the minimum mandatory sentence, and I will apply that in a way which will be to limit the sentence to five years and make all the sentences concurrent.

* * *

The sentence of this Court, therefore, in 1340 Criminal Action 1990, in Court Number 1, to involuntary deviate sexual intercourse, is that the Defendant shall undergo imprisonment in a state correctional institution for not less than five nor more than ten years.

Count Number 2, corruption of minors, the sentence is one to two years, minimum and maximum; and, in Count 3, the obscene and other sexual materials, a similar sentence of not less thatn one nor more than two years. These sentences are to be concurrent, all one with the other, so that the total sentence in 1340 Criminal Action 1990 is a sentence of not less than five nor more than 10 years.

3315 Criminal Action 1990, on involuntary deviate sexual intercourse, we impose the mandatory minimum sentence of not less than five

nor more than 10 years. We make this concurrent with the mandatory minimum sentence in 1340 Criminal Action, sentence, which we have imposed in this case is a mandatory minimum sentence of not less than five nor more than 10 years.

* * *

I want to state for the rcord that this is absolutely the most difficult sentence I have ever had to impose, and it is a classic case of what can happen when a judge is confrtoned with a mandatory sentence in the face of what are extraordinalry circumstances calling for an imposition of less thatn the mandatory sentence, and we thing it is obvious that the District Attorney's Office recognizes this as well, because it is for this reason we asume that the District Attorney's Office agreed, as part of the plea bargain, that it would not appeal any sentence which the Court would impose, thereby

inviting the Court to impose a sentence less than the mandatory minimum, but as we have indicated, the oath of office which we took to uphold the laws, gives us absolutely no discretion in this case.

* * *

THE COURT: I am now required to advise you of your post-sentencing rights, Mr. Chmiel. You have an absolute right to appeal to the Superior Court, but youmust file that appeal within 30 days from now.

Before you are permitted to file that appeal; however, you are first required to file a motion challenging the propriety of the sentence imposed, the validity of your guilty plea, and the denial of any motion to withdaw your pleas. You understand this?

THE DEFENDANT: Yes.

THE COURT: Such motions must be filed within 10 days of today, and only those claims raised in this Court may be raised on your appeal. Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand you are entitled to be represented by counsel in preparing and litigating such motions and appeal, and that you have the right to counsel free of charge to you if you can't afford your own. Do you understand this?

THE DEFENDANT: Yes, sir.

THE COURT: There are certain expenses and court fees involved in filing motions and an appeal; however, if you cannot afford to pay these expenses and fees, you may file your motions and appeal free of charge. Do you understand this?

THE DEFENDANT: Yes, Your Honor.

THE COURT: God be with you.

* * *

lmw-8/5/91

COMMONWEALTH OF PENNSYLVANIA : IN THE SUPERIOR COURT OF

v. : PENNSYLVANIA

EDWARD A. CHMIEL, :

Appellant : No.00522 HBG 91

Appeal from the Judgment of Sentence of July 22, 1991 in the Court of Common Pleas of York County Criminal Division, at No. 1340 CA 1990; 3315 CA 1990

BEFORE: OLSZEWSKI, BECK, AND HOFFMAN, JJ.

OPINION BY HOFFMAN, J.: FILED: JULY 22, 1992

This is an appeal from judgment of sentence for involuntary deviate sexual intercourse, corruption of minors and possession of obscene or other sexual materials. Appellant, Edward A. Chmiel, presents the following claims:

1. Whether Pennsylvania Crimes Code Section 9718, being a mandatory sentence, violates Appellant's rights and is therefore unconstitutional given and the unique facts and circumstances of this case.

2. Whether the lower court abused its jurisdiction by disregarding the plea bargin arranged and submitted to it, given the facts and circumstances of the crime.

3. Whether as a result, the sentence is in violation of the Eighth Amendment of the constitution of the United States.

Appellant's brief at 1. For the following reasons, we affirm.

On May 9, 1991, appellant pleaded guilty on consolidated cases to involuntary deviate sexual intercourse (two counts), corruption of minors and possession of obscene and other sexual material and performances. On July 22, 1991, appellant was sentenced to concurrent terms of five-to-ten years for involuntary deviate sexual intercourse, one-to-two years for corruption of minors and one-to-two years for possession of obscene and other sexual material and performances. The aggregate term was set at not-less-than-five-nor-more-than-ten years. Appellant then filed motions to withdraw his guilty plea and to modify sentence, which were both denied. This timely appeal followed.

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18 Pa. C.S.A. Section 3123

18 Pa. C.S.A. Section 6301

18 Pa. C.S.A. Section 5903

The charges in the instant appeal arose out of incidents that occurred beginning in the spring of 1986. The victims were brothers who were both under the age of sixteen when the offenses were committed. In the spring of 1986 appellant engaged in oral sex with one of the brothers. The following summer appellant became involved with the younger of the two brothers. Appellant admitted to showing him pornographic video tapes and engaging in oral sex with him.

Appellant first contends that Section 9718 of the Pennsylvania Crimes Code, which requires a mandatory sentence, violates his rights and is therefore unconstitutional. Specifically, appellant argues that because of his age a mandatory minimum sentence constitutes cruel and unusual punishment. This claim is meritless.

As a general principle, this court must begin its analysis of the constitutionality of a statute with a strong presumption that the statute is constitutional. Commonwealth v.

Mikulan, 504 Pa. 244, 247, 470 A.2d 1339, 1340 (1983); Commonwealth v. Cooke, 342 Pa. Super. 58, 69, 492 A.2d 63, 69 (1985). A statute will not be declared unconstitutional unless it clearly, palpably and plainly violates the Constitution. Snider v. Thornburgh, 496 Pa. 159, 166, 436 A.2d 593, 596 (1981).

42 Pa. C.S.A. Sectin 9718 provides, in relevant part, that:

> A person convicted of the following offenses when the victim is under 16 years of age shall be sentenced to a mandatory term of imprisonment as follows:
>
> ...
>
> 18 Pa. C.S.A. Section 3123 (relating to involuntary deviate sexual intercourse) - not less than five years.

42 Pa. C.S.A. Section 9718. The question of whether this section violates the constitutional prohibition against cruel and unusual punishment

was discussed in Commonwealth v. Wildermuth, 347 Pa. Super. 640, 501 A.2d 258 (1985). In Wildermuth the court rejected a claim by a man over 60 years of age that a mandatory minimum constituted cruel and unusual punishment in violation of the eight amendment. This court, adopting the opinion of the trial court, wrote:

> Insofar as 42 Pa. C.S.A. Section 9718 is concerned, we do not conclude that the imposition of a mandatory five year minimum prison term is cruel or unusual. The crimes in question here, rape and involuntary deviate sexual intercourse, committed against a minor, are crimes of great severity and the legislature in enacting this statute expressed its grave concern for the protection of minors. Specifically, this act is designed to punish those criminals who prey on the helpless children in our society. Clearly, the nature and severity of the crime justify the legislature's rationally based minimum sentence.
>
> In the analysis of the sentences effect on individual dignity, we also find no constitutional infirmity. As the U.S. Supreme Court stated in Rhoads [Rhoades] v. Chapman, 452 U.S. 337, 348, 101 Superior [sic] Ct. 2392 [2400], 69 L.Ed.2d 59 (1981), "to the extent that such conditions of confinement are restrictive and evenharsh, they are part of the penalty that criminal offenders pay for their offenses against society."

> Defendant's assertion that Pennsylvania has "no prison facility specially [sic] to meet the needs of that aged and infirm," does not prove that incarceration per se would be cruel and unusual punishment. Certainly, if the defendant required medical treatment it would be available to him, but to conclude that any prison term violates the 8th Amendment is without foundation....

Id. at 645-46, 501 A.2d at 261.

However, appellant argues that because he suffers from a certified medical illness his case is distinguishable from Wildermuth. This claim is without merit. As noted above, the appellant in Wildermuth was over 60 years of age and the court specifically rejected the argument that needs of the elderly or infirm had any relevance to a constitutional analysis of the mandatory minimum sentencing provision. Consequently, we reject appellant's claim that the provision constitutes cruel and unusual punishment in violation of the 8th Amendment.

Appellant next contends that the lower court abused its discretion by disregarding the plea bargain arranged and submitted to the

court. This claim is without merit.

At sentencing, the court engaged in an exhaustive review of the case's mitigating and aggravating factors, as well as the applicable law. The court then imposed the minimum sentence prescrived by law and in accordance with the previous agreement between the Commonwealth and appellant, ran all sentences concurrently. Thus the trial court followed the plea agreement and did not abuse its discretion.

Lastly, appellant contends that 42 Pa. C.S.A. Section 9718 (the mandatory minimum sentencing provision) is a violation of his rights to due process of law and equal protection. These claims are meritless.

Specifically, appellant contends that section 9718 violates the constitutional guarantee of due process of law because (1) the statute allows for no consideration of the rehabilitative needs of the defendant; and (2) the statute fails to require the prosecutor to

give notice of the intent to proceed under the statute. We disagree.

In general, our courts have upheld the constitutionality of mandatory minimum sentencing provisions. Our Supreme Court rejected a due process challenge to the five year minimum sentence mandated by Section 9712 of the Judicial Code, specifically acknowledging that there is a legislative prerogative to determine the punishment for criminal conduct. Commonwealth v. Wright, 508 Pa. 25, 40, 494 A.2d 354, 361 (1985). The assessment in Wright of Section 9712 applies with equal validity to Section 9718. Section 9718 merely limits the

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Section 9712 provides for a mandatory minimum sentence for offenses committed with visible possession of a firearm.

"The effect of section 9712 is merely to limit the discretion of the sentencing court in the selection of a minimum sentence where it is determined that the defendant visibly possessed a firearm during the commission of the crime. The maximum term of imprisonment remains unaffected. The defendant has no cognizable right to leniency." Commonwealth v. Wright, 508 Pa. 25, 40 - 41, 494 A.2d 354, 362 (1985).

discretion of the court in imposition of a minimum sentence where it is determined that the victim is under the age of 16. Consequently, appellant's claim that the fact that the statute allows for no discretion violates due process is without merit.

Appellant also argues that the District Attorney's failure to give appellant notice of his intention to proceed under Section 9718 violates appellant's rights to due process. Brief for appellant at 18. Commonwealth v. Leonhart, 358 Pa. Super. 494, 498, 517 A.2d

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We note that there is some inaccuracy in speaking of the District Attorney's intention to "proceed" under Section 9718. Section 9718, in contrast to Section 9712 (mandatory minimum for offenses committed with the visible possession of a firearm), requires no proof of an additional element at sentencing. The instant underlying offense of involuntary deviate sexual intercourse, 18 Pa. C.S.A. Section 3123, includes as an element that the victim was under the age of sixteen. Once the age of the victim is established as less than sixteen, the prosecutor has no role to play in the application of the mandatory minimum sentence prescrived by section 9718. Notably, appelant does not argue that he was unaware of the age of his victims.

1342, 1344 (1986), allocatur denied, 515 Pa. 620, 531 A.2d 428 (1987), requires that notice of the applicability of Section 9718 be given prior to sentencing. Appellant statues in his brief that, "In their belief that the statute was solely controlling, the prosecutor and defense plea bargained an agreement whereby the prosecutor agreed to "stand aside" and not appeal should the court agree not to apply the mandatory sentence." Brief for appellant at 18 (emphasis added). Thus, it is clear that the prosecutor and the defense attorney discussed the existence of Sectin 9718 and its application to the case. Accordingly, appellant's claim is meritless.

Appellant finally contends that Section 9718 is violative of the equal protection guarantees of the United States constitution. We disagree.

The threshold question in analyzing a statute to determine whether it violates equal

protection principles is whether the state has created a classification for the unequal distribution of benefits or imposition or burdens. Commonwealth v. Parker White Metal Co., 512 Pa. 74, 84, 515 A.2d 1358, 1363 (1986). By mandating a five year minimum sentence for persons convicted of various enumerated sex offenses against a minor, Section 9718 clearly limits the court's discretion in fashioning minimum sentences for particular classes of offenders. However, this in itself is not sufficient to make out a violation of the constitutional guarantee of equal protection under the law.

Our Supreme Court has said that it is not unconstitutional for the state "to treat different classes of persons in different ways." so long as the classification is "reasonable, not arbitrary." and "rest[s] upon some ground of difference having a fair and substantial relation to the object of the legislation so

that all persons in similar circumstances shall be treated alike." Moyer v. Phillips, 462 Pa. 395, 400-01, 341 A.2d 441, 443 (1975).

In rejecting an equal protection challenge to Section 9718, the Wildermuth court found that "[i]n imposing mandatory sentences upon those who commit any of the enumerated offenses against infant persons, the legislature was concerned with the vulnerability of individuals under 16 years of age [just as it was concerned with protecting older citizens rendered vulnerable as a result of their advanced age to certain crimes perpetrated by more youthful offenders when they enacted Section 9717 relating to offenses against elderly persons]."

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The Wildermuth court noted that it was of the opinion that a statute which classifies convicted offenders for the purposes of mandatory sentencing on the basis of the relative ages of the victims does not involve a "suspect class or a "fundamental right" warranting the utilization of a standard of review more stringent than the rational basis standard enunciated in Moyer. Commonwealth v. Wildermuth, 347 Pa. Super. 640, 643 n.2, 501 A.2d 258, 260 n.2 (1985).

Wildermuth, 347 Pa. Super at 643, 501 A.2d at 260. This legislative concern with the vulnerability of youth is sufficient under the "rational basis" standard articulated in Moyer v. Phillips, supra. Accordingly, we find appellant's contention that sectin 9718 violates equal protection guarantees to be without merit. For the foregoing reasons, we affirm the judgment of sentence.

Judgment of sentence affirmed.

JUDGEMENT ENTERED
DATED: 07/22/92

/s/ Mildred E. Williamson
DEPUTY PROTHONOTARY

Appendix C-64

**SUPREME COURT OF PENNSYLVANIA**
**MIDDLE DISTRICT**

CHARLES W. JOHNS, ESQUIRE
PROTHONOTARY

WILDRED E. WILLIAMSON
DEPUTY PROTHONOTARY

434 MAIN CAPITOL BUILDING
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July 19, 1993

Dennis A. Alessi, Esq.
120 East King St.
York, PA 17401

Re: COMMONWEALTH OF PENNSYLVANIA

v. EDWARD A. CHMIEL
No. 0338 M.D. Allocatur 1992

Dear Petitioner:

This is to advise that the following order has been endorsed on the Petition for Allowance of Appeal in the above-captioned matter:

"07/16/93
Petition Denied.
Per Curiam"

Sincerely yours,

/s/ Shirley J. Phipps

PROTHONOTARY'S OFFICE
SUPREME COURT OF PENNSYLVANIA

c: OLSZEWSKI, BECK & HOFFMAN, JJ
Superior 00522HBG91
Cassimatis, Emanuel A., J. York
Criminal 1340; 3315CA90
John Haugh, Asst. D.A.

Appendix D-65

## AUTHORITIES

### Constitution

Amendment 8

Excessive bail shall not be required, nor excessive fines posed, nor cruel and unusual punishments inflicted.

Amendment 14

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

### Statutes

18 Pa.C.S.A. Section 104 - Crimes and Offenses

Purposes

(1) To forbid and prevent conduct that unjustifiably inflicts or threatens substantial harm to individual or public interest.

(2) To safeguard conduct that is without fault from condemnation as criminal.

(3) To safeguard offenders against excessive, disproportionate or arbitrary punishment.

(4) To give fair warning of the nature of the conduct declared to constitute an offense, and of the sentences that may be imposed on conviction of an offense.

(5) To differentiate on reasonable grounds between serious and minor offenses, and to differentiate among offenders with a view to a just individualization in their treatment.

42 Pa.C.S.A. Section 2154 - Pennsylvania Commission on Sentencing

Adoption of Guidelines for Sentencing

(a) General rule.-- The commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors. The guidelines shall:



(1) Specify the range of sentences applicable to crimes of a given degree of gravity.

(2) Specify a range of sentences of increased severity for defendants previously convicted or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this section, "previously convicted or

adjudicated delinquent" shall include any finding of guilt or adjudication of delinquency whether or not sentence has been imposed or disposition ordered prior to the commission of the current offense.

(3) Specify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense.

(4) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

(b) Definition.-- As used in this section the term "possessed" means on the defendant's person or within him immediate physical control.

42 Pa.C.S.A. Section 9718 - Judiciary and Judicial Procedure

Sentences for Offenses Against Infant Persons

(a) Mandatory Sentence.-- A person convicted of the following offenses when the victim is under 16 years of age shall be sentenced to a mandatory term of imprisonment as follows:

18 Pa.C.S.A. Section 2702(a)(1) and (4) (relating to aggravated assault)--not less than two years.

18 Pa.C.S.A. Section 3121 (relating to rape)--not less than five years.

18 Pa.C.S.A. Section 3123 (relating to involuntary deviate sexual intercourse)--not less than five years.

(b) Eligibility for Parole.-- Parole shall not be granted until the minimum term of imprisonment has been served.